

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 7, 2004**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of April 7, 2004, was called to order by Mayor Hansen at 5:48 p.m.

Present: Council Members – Beckman, Hitchcock (arrived at 5:55 p.m.), Howard, Land (arrived at 6:00 p.m.), and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- c) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- d) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- e) Actual Litigation: Government Code §54956.9(a); one case; City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM

C-3 ADJOURN TO CLOSED SESSION

At 5:48 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:00 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:07 p.m., Mayor Hansen reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed the following actions:

In regard to Item C-2 (a), Council provided direction.

In regard to Item C-2 (b), (c), (d) and (e), no reportable action was taken.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of April 7, 2004, was called to order by Mayor Hansen at 7:07 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Paul Zimmerman, St. Peter Lutheran Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hansen.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Christine Lavond, member of the Library Board of Trustees, presented the Bob Hildreth 2004 Library Volunteer of the Year award to Patricia Pischnalnikoff.

D-2 (a) Mayor Hansen presented a proclamation to Nancy Martinez, Library Services Director, proclaiming the week of April 18 - 24, 2004, as "National Library Week" in the City of Lodi.

D-2 (b) Mayor Hansen presented a proclamation to Nancy Martinez, Library Services Director, proclaiming April 18, 2004, as "National Youth Service Day" in the City of Lodi.

D-2 (c) Mayor Hansen presented a proclamation to Anissa Flores, representing the Women's Center of San Joaquin County, proclaiming the month of April 2004 as "Sexual Assault Awareness Month" in the City of Lodi.

D-3 Presentations – None

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$6,779,601.43.

E-2 The minutes of March 3, 2004 (Regular Meeting), March 9, 2004 (Shirtsleeve Session), March 9, 2004 (Special Meeting), March 12, 2004 (Special Meeting), March 16, 2004 (Shirtsleeve Session), March 16, 2004 (Special Meeting), March 22, 2004 (Special Meeting), March 23, 2004 (Shirtsleeve Session), March 23, 2004 (Adjourned Special Meeting), March 25, 2004 (Special Meeting), and March 31, 2004 (Special Joint Meeting with the East Side Improvement Committee) were approved as written.

E-3 Received the report of the sale of scrap metal.

E-4 Approved the specifications and authorized advertisement for bids for up to 100 galvanized steel streetlight standards.

E-5 Approved the specifications and authorized advertisement for bids for wood utility poles as needed by the Electric Utility Department during calendar year 2004.

E-6 Adopted Resolution No. 2004-54 awarding the contracts for City-wide janitorial services to Korean Professional Building Maintenance, of Stockton; ServiceMaster Commercial Building Maintenance, of Sacramento; and Cleaning Concepts, of Lodi, in accordance with staff recommendation below:

1. That the Police Facility and the Library (Group A) be awarded to Korean Professional Building Maintenance on the Standard Schedule because of the number of citizens they serve and operational issues (i.e., 24/7 jail, dispatch, and other high-use areas). The existing frequencies at the Police Facility are six days per week for the jail portion and five days per week for the rest of the building. The Library includes a reduction from seven days a week to five days a week. The annual cost is \$58,560.

2. That the Civic Center Facilities (City Hall, Court, Carnegie Forum, and Finance Department) (Group B) be awarded to ServiceMaster Commercial Building Maintenance on the Reduced Schedule. The annual cost is \$25,272.
 3. That the Municipal Service Center, Parks and Recreation Facilities, White Slough, and Parking Structure (for Fire Administration) (Group C) be awarded to ServiceMaster Commercial Building Maintenance on the Reduced Schedule. The annual cost is \$19,308.
 4. That the Community Center at Hutchins Street Square (Group D) be awarded to Cleaning Concepts on the Standard Schedule. Hutchins Street Square recovers its janitorial expense through billing its renters, and the difference between standard and reduced services is only \$300 per month. The annual cost is \$11,640.
 5. Bids for emergency cleaning and call outs were received from all contractors. Those minimum call out and hourly rates are part of the contracts.
 6. Window cleaning was also bid as an alternate and will be part of the contracts to be used as needed.
- E-7 Adopted Resolution No. 2004-55 accepting the improvements for Harney Lane Sanitary Sewer Lift Station.
- E-8 Adopted Resolution No. 2004-56 accepting the public improvements of the public alley north of Oak Street, west of Central Avenue at the Joe Serna, Jr., Charter School Site.
- E-9 Adopted Resolution No. 2004-57 approving the improvement agreement for the public improvements of 620 South Cherokee Lane (APN 047-450-36); directed the City Manager and City Clerk to execute the improvement agreement on behalf of the City; and appropriated funds in the amount of \$85,000 for applicable reimbursements.
- E-10 "Adopt resolution authorizing the City Manager to execute a contract with the Lodi-Tokay Rotary Club for the 13th Annual Oooh Ahhh Festival to be held on July 4, 2004 (\$18,000)" was ***removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.***
- E-11 Adopted Resolution No. 2004-58 authorizing the City Manager to allocate \$14,675 to fund a City of Lodi Parks and Recreation lighting retrofit project and to execute a contract with Eagle Energy Management to conduct the project work.
- E-12 "Adopt resolution approving Memorandum of Understanding between the City of Lodi and Lodi Professional Firefighters" was ***pulled from the agenda pursuant to staff's request.***
- E-13 "Adopt resolution approving Memorandum of Understanding between City of Lodi and Association of Lodi City Employees (General Services)" was ***pulled from the agenda pursuant to staff's request.***
- E-14 "Adopt resolution approving the renewal of the renegotiated Fire Emergency Services Dispatch agreement with the Stockton Fire Department" was ***pulled from the agenda pursuant to staff's request.***
- E-15 Adopted Resolution No. 2004-59 authorizing the City Manager to execute a one-year on-site catering agreement at Hutchins Street Square with Wine Valley Catering, Inc.
- E-16 Adopted Resolution No. 2004-60 authorizing the City Manager to appropriate \$25,000 in Public Benefit Program funds for the Lodi Residential Swimming Pool Pump & Motor Rebate Program for City of Lodi Electric Utility customers.
- E-17 Adopted Resolution No. 2004-61 supporting the continuous operation of the Defense Distribution Center San Joaquin.

- E-18 Adopted Resolution No. 2004-62 revising the current abatement fee schedule for rotating contractor list.
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ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

- E-10 "Adopt resolution authorizing the City Manager to execute a contract with the Lodi-Tokay Rotary Club for the 13th Annual Oooh Ahhh Festival to be held on July 4, 2004 (\$18,000)"

Janet Hamilton, Management Analyst II, stated that the Lodi-Tokay Rotary Club has a concern with a clause that has been in the contract since 1996.

City Manager Flynn read from the agreement, page 4, section 10, subsection D, "*After distribution of such profits to local non-profit organizations furnishing volunteers, any remaining profits shall go into the City's general fund.*"

Steve Whyte reported that the Oooh Ahhh Festival is the biggest fundraiser of the Lodi-Tokay Rotary Club. Non-profit organizations work at the event, help with staffing, and raise money from the proceeds. He explained that out of the net proceeds, the Lodi-Tokay Rotary Club donates back to local non-profit organizations and community projects. He asked that section 10, subsection D, be amended or removed from the agreement.

Mr. Flynn suggested that the language be changed to "any remaining profits shall go to the Lodi-Tokay Rotary Club."

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Land second, unanimously amended the contract language in Section D to read, "after distribution of such profits to local non-profit organizations furnishing volunteers, any remaining profits shall go to the Lodi-Tokay Rotary Club," and further adopted Resolution No. 2004-63 authorizing the City Manager to execute the contract with the Lodi-Tokay Rotary Club in the amount of \$18,000 for the 13th Annual Oooh Ahhh Festival to be held on July 4, 2004.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Tim Vallem commented that he recently read in the newspaper that the City was planning to annex property near Harney Lane and Lower Sacramento Road for the purpose of building 1,700 new homes. He expressed concern about using prime farmland, traffic congestion, and the fact that an out of town developer will build the homes. It will be a big impact to Lodi's 2% growth limit and eliminates local developers. He preferred that Council vote on this proposed development and the size limitation issue for large retail establishments; however, in absence of that, he asked that the people of Lodi be allowed to vote on these matters.

G. PUBLIC HEARINGS

- G-1 "Continue public hearing to April 21, 2004, to consider an appeal received from Key
AND Advertising, Inc., regarding the Planning Commission's decision to deny the request of
G-2 Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign and a
Variance to double the maximum allowable sign area from 480 square feet to 960 square
feet to be located at 1251 South Beckman Road' AND "Re-continue public hearing to
April 21, 2004, to consider redesign concept for C-Basin (Pixley Park) and the exchange
of properties with GREM, Inc., to allow the relocation of C-Basin"

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously continued the above subject public hearings to April 21, 2004.

H. COMMUNICATIONS

H-1 On recommendation of the City's contract administrator, Insurance Consulting Associates, Inc. (ICA), and Human Resources staff, the City Council, on motion of Mayor Pro Tempore Beckman, Hitchcock second, unanimously rejected the following claim:

a) Magellan Environmental, Inc., date of loss 11/03 through 2/04

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 Appointments – None

H-4 Miscellaneous – None

I. REGULAR CALENDAR

I-1 "Updates from Mayor Larry Hansen regarding the following issues: Barger & Wolen audit of Envision Law Group's billings; status of recruitment process for new City Attorney; progress on Request for Proposals for special counsel to represent the City of Lodi in its Environmental Abatement Program litigation; legal proceedings relative to the Environmental Abatement Program litigation"

Mayor Hansen reported that the audit of Envision Law Group's billings continues to move forward. The application period for the position of city attorney closes on April 17. He and Council Member Hitchcock are reviewing the Requests for Information from legal firms and will proceed with scheduling interviews to be held before Council. In regard to the Environmental Abatement Program, a status hearing was held on March 26 and the next meeting is scheduled for June.

MOTION/ VOTE:

There was no Council action necessary on this matter.

NOTE: The following items were discussed out of order.

I-4 "Adopt resolution approving the Joint Venture Agreement between the City of Lodi, City of Stockton, American Medical Response, and A-1 Ambulance"

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Hitchcock second, unanimously rescheduled the above subject matter to the Regular City Council meeting of April 21, 2004.

I-2 "Approve Special Allocation for expenses incurred for moving and storing Environmental Abatement Program (EAP) litigation files (\$17,005); ~~and Kronick Moskowitz Tiedemann & Girard bill for services in the EAP litigation for February 2004 (\$100,936.58)~~"

Interim City Attorney Schwabauer pulled the Kronick Moskowitz Tiedemann & Girard portion of the item, as he had not yet had an opportunity to fully review the bill. He reported that \$2,889 was expended to move 500 boxes from Envision Law Group in Lafayette to Lodi, and \$855 was charged to organize the boxes in numerical order. The cost to relocate 1,500 boxes and shelving from the Document Depository to the former Police Station building was \$11,532. The Document Depository rental fee for January 30 to February 11 was \$1,729.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously approved the Special Allocation for expenses incurred for moving and storing Environmental Abatement Program (EAP) litigation files in the amount of \$17,005.

- I-5 "Discussion and appropriate action regarding 1) placing a ballot measure establishing big-box size limits on the November 2, 2004, ballot; 2) establishing a big-box size limit for the ballot measure; and 3) placing a moratorium on big-box retail pending the results of a November 2, 2004, ballot measure"

Deputy City Manager Keeter recalled that a request was made at the Council meeting on March 17 to place this item on the agenda. She noted that Council will need to address the following issues as they relate to a proposed ballot measure:

- Does Council want to take the big-box retail size restriction to the voters in November 2004?
- If so, does Council want the size restriction to be established at no greater than 100,000 square feet?
- If not, then what size?
- Does Council want to impose a moratorium on big-box retail with a 100,000 square foot restriction until the voters take a position on the issue in November 2004?
- If so, will this include remodel and expansion of existing retail stores?

Ms. Keeter reported that a Notice of Intention to Circulate Petition was filed with the City Clerk on March 30. The proposed initiative would amend the City's zoning ordinance to impose a maximum size limitation of 100,000 square feet upon all large-scale retail stores. In addition, it stipulates that any project proposal that exceeds 100,000 square feet would be subject to a public vote for approval.

PUBLIC COMMENTS:

- Patrick Walsh identified himself as president of a non-profit charity and a small business owner. He voiced support for Wal-Mart and its associates. He reported that dozens of fire departments have thermal imaging cameras on their vehicles, due in part to donations by Wal-Mart. He commended the organization for continually supporting worthwhile local and national charities with donations, sponsoring events, and supplying personnel.
- Veronica Teran stated that she previously worked at Wal-Mart as a minor and felt that it was a terrible company that did not care about its employees. She feared that a Wal-Mart Supercenter would put smaller stores out of business.
- Treacy Elliott asked Council to consider the initiative that was presented by the Small City Preservation Committee and to place a moratorium on any development over 100,000 square feet until the voters have an opportunity to decide the issue.
- Betsy Fiske, Chair of the Small City Preservation Committee, urged Council to adopt the language of the initiative that was submitted on March 30. She asked that, in the interim, a moratorium be placed on all new buildings over 100,000 square feet. She noted that this is not just a Lodi issue; people all over the state are speaking up about large-scale retail, most recently in Inglewood.

In answer to Council Member Howard, Ms. Fiske stated that Don Mooney, a land use attorney in Davis, helped to draft the initiative and the Committee compensated him for his services.

- Michael Meek believed that the real issue was about the proposed Wal-Mart Supercenter, not large retail business in general. He did not think that it would put other stores out of business and was opposed to a moratorium. He supported the Wal-Mart Supercenter for the additional revenue it would bring to the City.

- Philip Kinsey commended Wal-Mart for its contributions to school programs. Mr. Kinsey stated that he was a former Wal-Mart employee and enjoyed working there. He supported the Wal-Mart Supercenter for the additional revenue it would bring to the growing City and felt that a moratorium was unnecessary.
- Shawn Martinez was in favor of the proposed Wal-Mart Supercenter for its convenience and low prices.
- Florbela Kinsey voiced support for the Wal-Mart Supercenter as it would offer additional jobs for local residents and convenient one-stop shopping. She named numerous local organizations, agencies, and programs that Wal-Mart has donated \$380,000 in cash and products to during the past few years.
- Marilyn Domingo was opposed to limiting the size of large retail buildings. Noting the City's priority projects, she stated that it cannot afford to limit retail revenue. She did not believe that the Council should initiate a ballot measure; it should come from a citizen initiative.
- Art Johns pointed out that 100 years ago in the United States there was great concern about monopolies and actions were taken to control them. He believed that large retail businesses cause traffic congestion and parking problems. Wal-Mart allows recreational vehicles to camp in their parking lots. He asserted that most of Wal-Mart's profits go back to its headquarters to make bigger and better stores, not back into the communities in which they operate. He favored the size limit of 100,000 square feet on large retail buildings.
- Scott Glanville stated that with proper design standards being used, he would like to see the Wal-Mart Supercenter in Lodi.
- Carol Cash stated that she has worked for Wal-Mart for 12 years and receives good pay and benefits. It is a family-oriented organization and provides opportunities for advancement. She works as the Community Involvement Coordinator and Support Manager. Ms. Cash reviewed the charitable programs that Wal-Mart has contributed to with grants, scholarships, etc. She opposed the ballot measure and moratorium proposals.
- Kenneth Lopes recalled that 40 years ago Lodi residents all flocked to the malls in Stockton because there were no such shopping opportunities in the local community. This resulted in a loss of revenue for the City, and he intimated that this will continue to occur if businesses are prevented from operating in Lodi. He failed to see what difference the size of the store makes and pointed out that there is an enormous car dealership currently being constructed in the City. In reference to the concept of monopolies, he noted that one family who came to Lodi 45 years ago now owns all the car dealerships except two and are now pursuing those.
- Shelby Wicklund introduced herself as a Wal-Mart associate and customer who enjoys working with the company and would appreciate the convenient, one-stop shopping that a Wal-Mart Supercenter would offer.
- Michael Folkner, Store Manager for the Lodi Wal-Mart, stated that he has worked for the company for 12 years and began in a position of unloading trucks. He noted that if a size limitation had been in effect ten years ago, the Wal-Mart store would not be located in Lodi and 300 of its associates might not have jobs. He stated that it has outgrown the current store and urged Council not to adopt a size limitation restriction on large retail businesses.

- Karen Green voiced support for the proposed Wal-Mart Supercenter and urged Council not to place a moratorium on large retail businesses.
- Sharon Salas believed that Wal-Mart is a great store and it has excellent employees. She expressed support for the proposed Wal-Mart Supercenter for its convenience and low prices. She did not believe it would take business away from existing stores.
- Pat Patrick, President and Chief Executive Officer of the Lodi Chamber of Commerce, stated that the Chamber is not in favor of a size limitation on large retail stores. The Chamber represents 750 businesses in Lodi. He noted that Lodi now has new design standards in place, which eliminates the "big box" style. The Chamber and most of Lodi want to preserve the agricultural land that surrounds the community; however, the Wal-Mart Supercenter and other projects currently being considered are within the City limits and zoned for commercial development. He stated that size does not necessarily give an unfair advantage. The key of marketing is in how a business differentiates itself from another. He encouraged Council to take a stance on the issue and oppose a size limitation. In reference to the moratorium, he asked Council not to penalize businesses for something that may or may not be on the ballot in November.

Council Member Hitchcock asked Mr. Patrick if the Chamber discussed the social impacts of "big-box" development. She stated that when a Wal-Mart Supercenter was constructed in Las Vegas, 18 Raley's stores closed. She intimated that it is eliminating the middle class and suggested that getting good prices – has a price.

Mr. Patrick replied that the Chamber and its members believe in the principle of free enterprise. The Chamber encourages people to vote every day, economically, by where they choose to spend their dollars.

- Joe Pacino was opposed to the proposed Wal-Mart Supercenter. He stated that Wal-Mart forces its top 100 suppliers to outsource its jobs to "practically slave labor." China imports 10% of its retail to Wal-Mart. He urged Council to place the size limitation matter on the November ballot.
- Dean Meier supported a size limitation measure being placed on the November ballot and a moratorium on large retail businesses until the election. He cited negative impacts on economics, social issues, traffic congestion, and pollution as reasons to oppose the Wal-Mart Supercenter.
- Lois Poole mentioned that she was born in Lodi 65 years ago, works for Wal-Mart, has medical benefits, and is treated fairly.
- Ann Cerney, representing Citizens for Open Government, expressed support for placing the 100,000 square foot size limitation on retail establishments on the ballot and adoption of a moratorium until November. She urged Council to conduct a cost benefit ration study, noting that the City of Los Angeles has gathered data, which shows that developments with large retail stores costs more in additional public services, e.g. police and fire, than they generate in sales tax revenue.

Mayor Hansen suggested Council place a measure on ballot if the initiative proponents are not able to gather a sufficient number of signatures in time to qualify for the November election. He stated that from a holistic perspective he believes that the Wal-Mart Supercenter proposal is good for the City; however, because there is so much concern in the community, he is in favor of placing the matter on the ballot for a public vote.

- Tony Arnaiz asked Council to allow the size limitation proposal to be decided by the voters. He opposed all “big-box” development, as he believed existing businesses would suffer and it would result in lost jobs and revenue.
- Laddie Erbele, representing the Sierra Club, Delta Sierra Group, Mother Lode Chapter, believed the matter being discussed is a global issue. She expressed concern about the rapid growth of ever larger retail establishments. Given the rate at which prime agricultural land is disappearing in California and the poor air quality in San Joaquin County, she could not support the premise that sizes for retail establishments can continue to grow unchecked in the name of free enterprise. She supported size limits as part of retail design guidelines, a ballot initiative, and a moratorium. She urged Council to adopt the initiative as drafted by the Small City Preservation Committee.
- Robin Knowlton, member of the Small City Preservation Committee, asked that Council adopt the initiative as drafted by the Committee for placement on the November ballot and to place a moratorium on all retail development above 100,000 square feet until after the election. She believed that “supercenters” have hidden costs such as displacing locally owned businesses, increasing traffic congestion, placing large burdens on public infrastructure, discouraging new businesses, and degrading the look of the City. Pressure for converting farmland will increase and farms and wineries adjacent to these businesses will be negatively impacted.
- Alex Quinlivan, employee of Wal-Mart, voiced support for the proposed Supercenter for the convenience it will offer to its customers. He commented that Lodi will continue to grow whether it is desired or not.
- Patricia Wallace enjoys the small town environment that Lodi offers and believed that “big-box” retailers would diminish the economy and shut down “mom and pop” stores. She expressed support for the size limitation and moratorium on large retail establishments.
- Elizabeth Hernandez, employee of Food for Less, stated that a Wal-Mart Supercenter would harm existing grocery stores and cause loss of jobs. She favored the matter going before a vote of the people.
- Chris Wallace, employee of Wal-Mart, stated that the company has grown through good business practices and has been a benefit to the community. The corporation believes the Lodi community is large enough to support a Supercenter. He noted that consolidation into one store makes more sense than having two 70,000 square foot buildings side by side. He urged Council to make a decision on the matter as it represents all the people of Lodi, whereas placing a measure on the ballot will cause it to be decided by special interest groups.
- Christy Deschamp stated that she likes Lodi’s small, safe environment. She expressed support for a size limitation on large retail establishments and a moratorium until the matter is decided at an election.
- An unidentified/disguised individual noted that a Wal-Mart Supercenter is being constructed in Stockton, just ten miles away. He believed that existing stores would suffer if a Supercenter is built in Lodi. He suggested that Council adopt a size limitation of 135,000 to 150,000 square feet on all future retail establishments and review the matter every three to five years.
- Darryl Browman stated that he is a retail developer and opposed to a size limitation. Since an application for the Wal-Mart Supercenter was submitted one and a half years ago, Raley’s, Lakewood Mall, and Target are all considering remodeling and expanding. Mr. Browman attributed this to competition. He urged Council not to impose a moratorium. He asked that projects be allowed to continue through the process and

decision phases with a condition based on the outcome of the vote, should one occur. Mr. Browman reported that he is currently in negotiations with a tenant for the existing Wal-Mart building and a moratorium would jeopardize his ability to finalize an agreement, due to the uncertainty of an occupancy date.

Council Member Hitchcock and Mayor Hansen disclosed that they met with Mr. Browman previously. Mayor Hansen assured the public that if a ballot measure on this issue goes forward, no one will be allowed to “slip under the wire” and build a project.

- Vincent Sayles desired Lodi to retain its small, quaint character. He believed that Wal-Mart had negative employee conditions, would ravage the land, and is motivated by greed.
- Kerry Dunnihou stated that there were already an adequate number of grocery stores in Lodi for the population, especially in the area of Lower Sacramento Road and Kettleman Lane. More homes are planned near that location and the traffic is already congested. He asked Council to place the issue of size limitations on the ballot.
- Mary Corrales, employee of S-Mart Foods, expressed concern for her colleagues and small businesses if the Wal-Mart Supercenter is allowed to be built. She urged Council to place the matter on the ballot for public vote.
- Raleigh Morrow stated that Wal-Mart pays a larger payroll to the City than it makes in profits from the store in Lodi. He pointed out the paradox in trying to build up the community, sell Lodi wine around the world, and bring in tourists – alongside people saying they do not want to see Lodi change, many of whom moved here just a few years ago.
- Jeanne Marrow expressed support for Wal-Mart Supercenters and the way they are operated. She urged Council to show strong leadership and allow the project to proceed. She noted that there was no opposition to other large grocery store chains as they came into the community over the years.
- Virginia Lahr explained that she is a customer of Wal-Mart because of its low prices and commended the organization for its contributions to the community. She supported the Wal-Mart Supercenter proposal and did not believe it would negatively affect existing businesses. She pointed out that there was no opposition to the Lowe's project or the Rancho San Miguel Market, both of which are “big-box” retail.
- Frieda Parton disagreed with statements alleging that Wal-Mart puts others out of business. She was against a size limitation and believed that using good design standards can make any size building attractive.
- Ninfa Herrera urged Council to allow the public to vote on the issue and expressed concern that the Wal-Mart Supercenter would put existing stores out of business.
- Ann Hughes voiced support for a ballot measure.

In answer to Council Member Howard, Interim City Attorney Schwabauer stated if the initiative was successful, buildings already constructed would be grandfathered in and would not be subject to its requirements. The proposed initiative addresses 100,000 square feet in gross floor area, so two 70,000 square foot buildings could be placed side by side and not be over the size limitation.

Council Member Howard disclosed that she met with Mr. Browman and a representative from Wal-Mart. Ms. Howard stated that she was not in favor of establishing a ballot measure related to "big-box" size limits. She believed it to be the role and responsibility of the Council to make decisions on issues that come before the City. She noted that a citywide survey has been conducted, which allowed a way for Council to receive information from the community. She believed that the proper course of action would be to allow the initiative proponents to proceed, rather than Council bypassing the process and placing a measure on the ballot. She reported that a number of communications received by Council from citizens said that they did not want a Wal-Mart Supercenter, but would want a Macy's, Nordstrom, or Costco store. She pointed out that this would not be possible if a 100,000 square foot size limitation was imposed. Most businesses would not look favorably upon coming to Lodi if they had to wait a year or more for an election to find out whether or not they would be accepted in the community. Ms. Howard was opposed to placing a moratorium on large retail projects. Some projects have been in consideration for over a year and it would be unfair to stop them in anticipation of a ballot initiative that may or may not come to fruition.

Council Member Land disclosed that he spoke with Mr. Browman, a representative from Wal-Mart, and many others about this issue. Mr. Land stated that he has seen the drawings for the proposed Wal-Mart Supercenter and believed that it would be one of the nicest looking buildings in the City. He asked if Wal-Mart were to build two 100,000 square foot buildings side by side with a breezeway between them, whether it would be within the proposed initiative's guidelines, to which Community Development Director Bartlam answered in the affirmative. Mr. Land recalled that when the 165,000 square foot Lowe's project was being considered he received a call from a local land use attorney. At that time the proposal was for a Winco grocery retail store and a Lowe's store. The land use attorney, who also represented the unions, told him that the supermajority of opposition to the project would go away if the Winco store was removed from the project. This in fact did take place, and there was no further opposition. He asked Council and the public to consider what the real issues are. He found it ironic that eight years ago Council was considering whether to place a *minimum* size of 50,000 square feet on retail establishments in what was then called the "Four Corners" shopping center. Mr. Land stated that he would support a moratorium if the initiative qualifies for the ballot, but in the meantime projects should be allowed to move forward through the process.

Mayor Pro Tempore Beckman noted that shortly after he asked that this item be placed on the agenda, the Small City Preservation Committee filed its intent to circulate a petition. He had suggested a size limit of 60,000 square feet; however, the Committee believed it to be too extreme. He originally saw this as an opportunity for Lodi to define itself as a small town. He believed the 100,000 square foot size limit was not the right choice, and that the requirement for any business over that size to first go through a public vote is bad business. Mr. Beckman stated that he would oppose the ballot initiative.

Council Member Hitchcock reported that Wal-Mart is the largest political action committee in the United States. It has contributed to 49% of all of the sitting legislators on the federal level. Wal-Mart had the largest corporate profit in the United States last year at \$245 billion. Ms. Hitchcock noted that they have the potential to make an impact, and she is trying to explore whether it is positive or negative. She expressed a desire to have more information on analysis by cost benefits to the City. She supported the matter going to a public vote through the initiative process and placing a moratorium on projects until the election results are known. She expressed concern about the added expense of conducting a special election.

In answer to Council Member Hitchcock, City Clerk Blackston explained that if the initiative proponents are successful in obtaining signatures from 15% (3,950) or more of the registered voters in the City of Lodi, it would qualify for a special election to be held not less than 88 days nor more than 103 days after the date the Council orders the election; whereas, 10% (2,634) would qualify the petition for the next regular election. She noted that the initiative proponents have 180 days from the date of receipt of the ballot title and summary to collect the signatures.

In response to Council Member Hitchcock, Interim City Attorney Schwabauer reported that there is case law that indicates a moratorium can only apply to the final act of project approval.

Mayor Hansen did not think that government should interfere with the free enterprise system. He pointed out that Food for Less is building the Rancho San Miguel Market on the east side, which will compete with smaller businesses near that location. Now that a store may compete with Food for Less it has an issue with the size, etc. He recalled that when Food for Less first came to Lodi no one thought it was the City's obligation to protect the jobs of employees of existing grocery stores. He believed that large retail projects should be allowed to continue through the process with final approval contingent upon the outcome of the vote. He suggested that whether or not the required number of signatures are obtained by the initiative proponents, the matter should go before a vote of the people in November.

MOTION #1:

Council Member Hitchcock made a motion, Hansen second, that Council *not* place a measure establishing big-box size limits on the November 2, 2004, ballot, but to support citizens bringing forward an initiative.

DISCUSSION:

Interim City Attorney Schwabauer believed it was premature of Council to make a decision about the proposed initiative prior to it being filed and verified.

Mayor Pro Tempore Beckman and Council Members Howard and Land expressed agreement with Mr. Schwabauer's statement.

VOTE:

The motion **failed** by the following vote:

Ayes: Council Members – Hitchcock and Mayor Hansen

Noes: Council Members – Beckman, Howard, and Land

Absent: Council Members – None

MOTION #2:

Council Member Hitchcock made a motion, Beckman second, to impose a moratorium on final approval for big-box retail (100,000 square feet or greater) until voters take a position on the issue at an election, for which the citizen initiative qualifies.

DISCUSSION:

Mayor Hansen asked if the initiative passed, whether it would prevent the expansions of existing businesses.

Mr. Schwabauer answered in the affirmative, explaining that when an existing business applies for a permit, it would lose its grandfather status.

Community Development Director Bartlam agreed, noting that the planned Target expansion, which is anticipated to be ready for approval prior to November, would be delayed or prevented from occurring if the initiative passed. The motion under consideration would allow processing of the application to continue; however, it would not be scheduled for a hearing. In his opinion the initiative would *not* affect the proposed remodel and expansion of the Raley's or Lakewood Mall because neither has over 100,000 square foot uses. It *would* effect the application for the Target expansion and proposed Wal-Mart Supercenter.

RECESS

At 9:07 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 9:20 p.m.

I. REGULAR CALENDAR (Continued)

I-5 Interim City Attorney Schwabauer stated that pursuant to Government Code §65858, in (Cont'd.) order to adopt an interim ordinance Council must make a finding that there is a current and immediate threat to the public health, safety, or welfare and that the approval of additional subdivision, use permits, variances, building permits, or any other applicable entitlement for use, which is required in order to comply with a zoning ordinance, would result in that threat to public health, safety, or welfare. He suggested that Council allow him an opportunity to come back with draft language for the interim ordinance and recommended that it be considered following a public hearing. He noted that an interim ordinance requires a 4/5 vote to pass.

Mayor Pro Tempore Beckman **withdrew** his second, and the motion **died** for lack of a second.

In answer to Mayor Hansen, Mr. Bartlam explained that approvals on projects are final at the Planning Commission level unless appealed to the City Council. Staff would not schedule a public hearing before the Planning Commission if a moratorium was in place because there would be no point in holding a public hearing without the ability to take final action.

Discussion ensued on various scenarios and timelines to qualify a petition for the November ballot or for a special election.

In response to Mayor Pro Tempore Beckman, Darryl Browman reiterated his suggestion that Council allow projects to proceed through the process with a condition of approval contingent upon the election results. He offered to provide an agreement to that effect.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Council Member Howard, Hitchcock second, unanimously voted to continue the meeting following the 11:00 p.m. hour, but to consider only Items I-3 and J-1 through J-2 (Ordinances).

I. REGULAR CALENDAR (Continued)

I-3 "Adopt resolution approving an agreement between City of Lodi and Spare Time, Inc., dba Twin Arbor Athletic Club, for use of pools at Twin Arbor Athletic Club facilities for the period of May 31, 2004 to July 25, 2004"

Parks and Recreation Director Goehring described the background related to the agreement between the City and Twin Arbor Athletic Club. He and Dennis Kauffman, General Manager of Twin Arbor, worked collaboratively on amending the agreement, and staff met with summer swim league coaches and coordinators to revise the summer swim league bylaws.

He assured Council that all interested parties are satisfied with the changes. The Twin Arbors Memorandum of Understanding now clarifies the content and more clearly defines what is expected of the Club and its coach. The summer swim league bylaws were changed to ensure parity and define the responsibilities of coaches. All coaches were provided an opportunity to review the draft bylaws and make recommended changes before they were finalized. He noted that coaches involved in last summer's controversy are no longer affiliated with the program.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously adopted Resolution No. 2004-64 approving an agreement between City of Lodi and Spare Time, Inc., dba Twin Arbor Athletic Club, for use of pools at Twin Arbor Athletic Club facilities for the period of May 31, 2004 to July 25, 2004.

I. REGULAR CALENDAR (Continued)

- I-6 "Adopt resolution approving the job specification and salary range for the position of Fire Administrative Captain and provide authorization to fill the position" was ***pulled from the agenda due to the above vote.***

J. ORDINANCES

- J-1 Following reading of the title of Ordinance No. 1745 entitled, "An Ordinance of the Lodi City Council Amending the Official Map of the City of Lodi and Thereby Rezoning the Parcel Located at 5952 East Pine Street (APN 049-090-13) from San Joaquin County A-U, Agricultural Urban Reserve, to M2, Heavy Industrial," having been introduced at a regular meeting of the Lodi City Council held March 17, 2004, the City Council, on motion of Mayor Pro Tempore Beckman, Howard second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-2 Following reading of the title of Ordinance No. 1746 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 17, Zoning, by Adding Chapter 17.58, Design Standards for Large Retail Establishments," having been introduced at a regular meeting of the Lodi City Council held March 17, 2004, Mayor Pro Tempore Beckman made a motion, Howard second, to waive reading of the ordinance in full and adopt and order it to print.

DISCUSSION:

Council Member Hitchcock explained that she would vote against the ordinance because she preferred that the design standards include a conditional use permit requirement for any project over 125,000 square feet to be considered by the Planning Commission with a right of appeal to the City Council.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, Land, and Mayor Hansen
Noes: Council Members – Hitchcock
Absent: Council Members – None
Abstain: Council Members – None

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

None.

Continued April 7, 2004

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced that Mayor Hansen's birthday was on April 15.
- Public Works Director Prima stated that he and Interim City Attorney Schwabauer attended a groundwater symposium today regarding investigation and remediation of dry cleaner release sites. Mayor Hansen participated in the panel discussion and did an outstanding job.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 1:11 a.m., Thursday, April 8, 2004, in memory of 1) Evelyn Hitchcock, mother of Council Member Susan Hitchcock, and 2) Lance Gardenhier, a 19-year-old who passed away on March 29, 2004.

ATTEST:

Susan J. Blackston
City Clerk